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MSHA: Advance notification of federal mine inspectors still a serious problem

ARLINGTON, Va. – Despite stepped-up enforcement efforts over the past two years by the U.S. Department of Labor’s Mine Safety and Health Administration, some mine operators continue to tip off their employees when federal inspectors arrive to carry out an inspection. The Federal Mine Safety and Health Act of 1977 specifically prohibits providing advance notice of inspections conducted by MSHA.

There have been several recent instances in which MSHA has been able to detect the occurrence of advance notice. For example, on March 22, agency inspectors responded to a hazard complaint call about conditions at Gateway Eagle Coal Co. LLC’s Sugar Maple Mine in Boone County, W.Va. A truck driver with J&N Trucking reportedly alerted mine personnel by citizens band radio of the inspectors’ arrival. The inspection turned up 14 violations for advance notification, accumulations of combustible material, and inadequate preshift and on-shift examinations, as well as a failure to comply with the current ventilation plan, maintain the lifeline, maintain permissibility of mobile equipment and maintain fire fighting equipment.

As a second example, during a Feb. 29 inspection at Rhino Eastern LLC’s Eagle No. 2 Mine in Wyoming County, W.Va., a dispatcher’s decision to shut down the belts prompted a call from the section foreman about his actions. The dispatcher responded that an MSHA inspector was at the mine. During this inspection, three citations were issued for failure to comply with the roof control and ventilation plans. In addition, a citation was issued to Applachian Security, a contractor, for providing advance notification of the MSHA inspection. Rhino Eastern’s Eagle No. 1 Mine was placed on potential pattern of violations status in November 2010 and again in August 2011 after a miner was killed in a rib collapse, and the mine’s compliance record deteriorated.

A third example is from Feb. 13, when the dispatcher for Metinvest B V’s Affinity Mine in Raleigh County, W.Va., notified the belt foreman over the mine telephone that federal and state inspectors were headed underground. The mine operator was issued a citation and, to abate it, MSHA required that all certified foremen and dispatchers be trained in the requirements of the Mine Act regarding advance notification, and that a notice be conspicuously posted in the mine office to ensure future compliance with the Mine Act.

“Providing advance notice of an inspection is illegal,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “It can obscure actual mining conditions by giving mine employees the opportunity to alter working conditions, thereby inhibiting the effectiveness of MSHA inspections. Furthermore, it appears that current penalties are not sufficient to deter this type of conduct.”

Upper Big Branch Mine superintendent Gary May recently entered into a plea agreement with the U.S. Department of Justice, admitting to conspiracy to give advance notification of mine inspections, falsify examination of record books and alter the mine’s ventilation system before federal inspectors were able to inspect underground. May testified that, through these unlawful practices, the mine operator was able to avoid detection of violations by federal and state inspectors.

“Despite the attention to the issue that has resulted from the Upper Big Branch investigation and recent testimony from Gary May, advance notice continues to occur too often in the coalfields,” said Main. “Upper Big Branch is a tragic reminder that operators and miners alike need to understand advance notice can prevent inspectors from finding hazards that can claim miners’ lives.”

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